HONOURABLE SRI JUSTICE J.CHELAMESWAR
And
HONOURABLE SRI JUSTICE D.APPARAO

03-08-2006

WRIT PETITION NOs.15744 & 15745 of 2006

Between:

M/s. B.Narayanarao .. Petitioner

And

1. The Commercial Tax Officer,
   Vijayawada and others.

..Respondents

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COMMON ORDER: (Per JC, J)**:**

These two writ petitions are almost identical and the issue raised in both the writ petitions is the same though the petitioners are different.

2. The petitioners in these two writ petitions are assessees under the rolls of the 1st respondent-Commercial Tax Officer, Vijayawada, and registered dealers, carrying on the business of execution of works contract. In the course of the execution of the said contracts, it appears that the petitioners utilized certain goods, which were purchased in the course of interstate rates. As a consequence of this, the petitioners lost the opportunity of being assessed to the sales tax under the provisions of Section 5-G of the A.P. General Sales Act (for brevity 'the Act'). They were compelled to offer a mode of assessment under Section 5 of the Act, in view of sub section (4) of Section 5-G of the Act, which was brought about by amendment to Section 5-G of the Act which debars the optional mode of assessment to the works contractors utilizing goods purchased in the course of interstate rates. But for such purchase, the work contractors would be entitled to a specific mode of assessment provided under Section 5-G (1) of the Act and the contractors have an option either to be assessed in accordance with procedure prescribed under Section 5-F or
5-G (1) of the Act subject to the fulfillment of certain procedure as contemplated under the Act, which was however, not available to the petitioners in view of amendment brought to Section 5-G of the Act.

3. Complaining that the exclusion of such an option under sub section (4) of Section 5-G of the Act is unconstitutional, both the petitioners had earlier approached this Court by way of two writ

petitions in W.P.Nos.8853 and 8854 of 2006, which were heard and reserved for judgment. The amendment brought to Section 5-G of the Act was the subject matter of challenge in the said writ petitions.

4. The assessments against both the petitioners are completed in accordance with the procedure prescribed under Section 5-F of the Act and the petitioners were found liable to pay some amount of tax, the details of which will not be necessary for the purpose of the present order. In the above mentioned two writ petitions, apart from the constitutional challenge to sub section (4) of Section 5-G of the Act, the petitioners also challenged the legality of the assessments. Understandably, if the petitioners succeed in their challenge to the constitutionality of sub section (4) of Section 5-G of the Act, necessarily, the assessments will have to be set aside.

5. It appears that in the meanwhile, the 3rd respondent-Deputy Commercial Tax Officer, Vijayawada, initiated garnishee proceedings against the Branch Manager, Union Bank of India, Governorper, Vijayawada, (4th respondent in both the writ petitions), who holds certain amounts of both of these petitioners as a banker, calling upon him to pay the amount of tax found due against each of the petitioners in the assessment proceedings. Against the said proceedings, the petitioners have filed the present writ petitions.

6. The learned counsel for the petitioners argued that both the petitioners paid 50% of the tax found due by the 1st respondent against each of them and, therefore, in view of the pendency of other two writ petitions, which were reserved for judgment, and the result upon which the legality of the present two assessments depend, it would be unjust on the part of the respondents to take such coercive steps in initiating garnishee proceedings.

7. The learned Government Pleader for Commercial Taxes, on

the other hand, argued that the garnishee proceedings have been properly initiated and as such no interference is warranted.

8. Having regard to the facts and the circumstances of the case, we are of the opinion that both these matters can be disposed of at this stage directing the 3rd respondent-Deputy Commercial Tax Officer, No.1, Autonagar, Vijayawada to withdraw the garnishee proceedings initiated against each of the petitioners on condition that the petitioners in both the writ petitions furnish immovable property as security for the balance amount of tax due. Such immovable property security shall be to the satisfaction of 3rd respondent. The continuance of securities shall depend on the result of the other two writ petitions.

9. Accordingly, both the Writ Petitions are disposed of with the aforementioned direction. No costs.

J.CHELAMESWAR, J

D.APPARAO, J

August 3, 2006.
Kvr